

GRIEVANCE AND ARBITRATION

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Federal Mediation and Conciliation Service

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FMCS Mission

Promoting the development of sound
and stable labor-management
relations,

Preventing or minimizing work
stoppages by assisting labor and
management in settling their disputes
through mediation,

FMCS Mission

Advocating collective bargaining,
mediation and voluntary arbitration
as the preferred process for settling
issues between employers and
representatives of employees,
Developing the art, science and practice
of conflict resolution,

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FMCS Mission

And fostering the establishment and
maintenance of constructive joint
processes to improve labor-
management relationships,
employment security and
organizational effectiveness.



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FMCS Services

Dispute Resolution

Labor-Management Training Programs

Alternative Dispute Resolution

International Labor-Management
Programs

Labor-Management Grants

Arbitration Services

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FMCS Preventive Mediation

Consultation

Relationship-By-Objective

Labor-Management Committees

Union Steward and Employer
Supervisor Training

Collective Bargaining

Interest-Based Bargaining

Grievance Administration

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FMCS Preventive Mediation

Interest Based Bargaining

Introduction to:

- IBB
- Win-Win
- Collaborative Bargaining
- Principled Negotiations

Skill training to understand the process

Negotiation in a non-adversarial atmosphere

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FMCS Preventive Mediation

Grievance Administration

Interactive activities to arouse the curiosities

Investigation processes to unravel the mystery

Establishing fact vs Fiction

Final step prior to arbitration

Discovering mutually agreeable solutions

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FMCS International

Africa

South African Mediation Service

Argentina, S.A.

Buenos Aires

Ecuador, S.A.

Guayaquil

Quito

Cuenca



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FMCS International

Hungry

Italy

Japan

Russia

Taiwan

Argentina



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Federal Mediation and Conciliation Service

Over 50 Years Working With
Labor and Management

Promoting Sound and Stable
Labor-Management Relations

Working For Conflict
Resolution Through Mediation

Improving The Art and
Science of Mediation

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Goals For Today

1. Define what is a grievance.
2. Define the purpose of a grievance procedure.
3. Define the five standards for a past practice.
4. Define the responsibilities for stewards and supervisors.
5. Define the seven tests of just cause.
6. Define the difference between arbitration and mediation.
7. Define the needed conflict skills for grievance processing.
8. Have some fun!

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Your Expectations

Write down three expectations you have for today's training.

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What is a Grievance?

A. *Is it a violation of the Contract?*

Clear violation of specific terms?

Interpretive violation of the agreement?

B. *Is it a violation of Federal, State or Territorial Law?*

Discrimination based on age, sex or race?

C. *Is it a violation of a Past Practice?*

May be accepted either orally or in writing.

Usually repeated over an extended period of time.

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D. Is it a violation of Management Responsibilities?

Not specifically mentioned under the terms of the agreement.

Clean, safe work area. Adequate lighting.

Proper heat and ventilation.

E. Is it a violation of Company Rules?

Number of warnings for discipline. Are rules reasonable and equally enforced.

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Types of Grievances

Job Classifications

Complaints against a supervisor(s)

Seniority

Discharge

Promotions

Transfers

Health and Safety

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Types of Grievances...

Interpretation of Contract

Settlement of Grievances

Violations of the Contract

Warning letters

Absenteeism

Miscellaneous

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Purpose of a Grievance Procedure

***What are some reasons for having a
grievance procedure in the labor
agreement?***

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Purpose of a Grievance Procedure

Find Facts

Peaceful Dispute Resolution

Forum to Administer the Contract

Improve Efficiency of Organization

Improve Labor-Management Relations

Locate Problems in Operation or Contract

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Past Practice

Past practice is protected by the written agreement. Generally past practices are created by management acting and creating a practice or allowing a condition to continue.

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1. **Mutuality** - Both parties must know about the practice.
2. **Consistency** - Has the practice been followed consistently when the situation arose?
3. **Bridge Effect** - Has the practice continued over two or more contracts? If so, there is stronger reason for finding the practice binding since it “bridged” a number of contracts.

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4. **Contract is Silent** - A practice will be more binding if the contract is silent and both union and management have been using or abiding by the practice.

5. **Working Condition Vs Gratuity** - If a long standing practice involves a working condition as opposed to a gratuity, arbitrators will have a greater propensity to uphold the practice.

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Interviewing Sheet

Grievant's Name _____ Phone # _____

1. Who's involved?
2. What happened?
3. Where did it happen?
4. When did it happen?
5. Why is it a grievance?
 - contract violation?
 - past practice violation?
6. What is the remedy?
7. What other information is needed or available to settle this issue?

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Grievance Writing

For your personal files get everything you can, interviews, notes from meetings, records of conversations, minute's of meetings, summaries of documents. Everything should be included. Do not be concerned about style, be concerned about getting all the information.

For the presentation to management or the union, the grievance form should include three basic elements:

1. **Protest** (statement of grievance).
2. **Charge** (violation of contract; past practice, laws, Safety, Arbitration Awards).
3. **Remedy** (what you want).

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Example:

- 1. *Protest* - The grievant was unjustly and improperly discharged for absenteeism on July 1, 2002.**
- 2. *Charge* - This is a violation of Article vi, section 4 of the contract.**
- 3. *Remedy* - The union demands that the grievant be reinstated effective July 1, 2002 and be made whole for all wages and or employment rights and benefits.**

Save arguments, proof, documentation for future meetings and hearings.

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Responsibilities for Steward & Supervisors

Report back keeping everyone informed regarding actions on their issues/grievances.

Deal with everybody as an individual.

Respect everybody and treat them in a dignified manner.

Recognize superior performance and give credit to anyone who makes a good suggestion.

Be alert to sources of employee irritation.

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Responsibilities for Steward & Supervisors...

Take prompt and effective action to eliminate the causes of irritation.

Enforce/understand company rules consistently.

Avoid favoritism at all levels.

Cooperate to eliminate issues.

Properly train/set example for employees.

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Danger Spots For Stewards/Supervisors

No plan of action

Not knowing or understanding the agreement

Failure to investigate

Failure to interpret the facts properly

Reliance on pat solutions

Failure to make a decision

Stalling and procrastination

Failure to anticipate problems

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• *Seven Tests of Just Cause*

1. **Notice**: “Did the employer give the employee forewarning or foreknowledge of the possible or probable consequences of the employee’s disciplinary conduct?”
2. **Reasonable Rule or Order**: “Was the Employer’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer’s business, and (b) the performance that the Employer might properly expect of the employees?”
3. **Investigation**: “Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?”

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4. **Fair Investigation**: “Was the Employer’s investigation conducted fairly and objectively?”
5. **Proof**: “At the investigation, did the judge obtain substantial evidence or proof that the employee was guilty as charged?”
6. **Equal Treatment**: Has the Employer applied its rules orders, and penalties evenhandedly and without discrimination to all employees?”
7. **Penalty**: “Was the degree of the discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee’s proven offense, and (b) the record of the employee in his service with the Employer?”

Just Cause: The Seven Tests (Coven and Smith, Coloracre Publications, 1985)

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Definitions of Mediation

An intervention by a third party neutral designed to facilitate negotiation.

A **voluntary** and **confidential** process in which an impartial third party **assists** disputants in finding a **mutually acceptable solution** to their dispute.

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Goals of Mediation

Vent feelings and reduce hostility.

Clear-up misunderstandings.

Facilitate clear communications.

Determine underlying interests.

Find areas of agreement.

Incorporate these into solutions devised by the parties.

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What is Arbitration?

Method of settling disputes through an impartial third party whose decision is usually final and binding.

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Arbitration as a Last Resort

A quasi-judicial process.

Gives arbitrator power to issue a decision/award which may result in a win-lose situation.

Parties lose control of dispute resolution.

Costly.

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Essential Components of Arbitration

What?
Who?
When?
How?
Where?

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The Grievance Arbitration Process

Three steps:

1. Preparation.
2. Hearing.
3. Award.

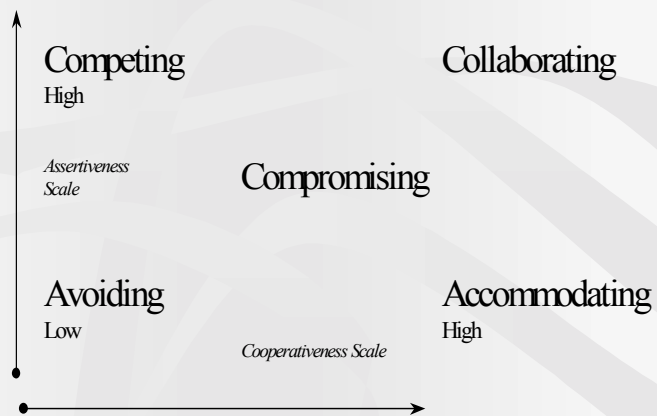
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Life is Difficult

M. Scott Peck

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Five Conflicts Handling Modes



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Conflict Positions

Avoiding

Low assertiveness

Low cooperation

Position is “not to take a position”

Can cause frustration and anger

Useful when conflict is trivial or time is limited

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Conflicts Positions

Accommodating

Low assertiveness

High cooperativeness

Satisfy concerns—of other party

Highly cooperative—but unassertive

Can make us feel powerless and frustrated

Good to maintain harmony and stability

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Conflict Positions

Competing

High assertiveness

Low cooperation

Direct opposite of accommodating

Little interest other party's concerns

Good in an emergency or when enforcing rules

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Conflict Positions

Compromising

Moderate assertiveness and cooperation

“Splitting the difference”

“Sharing”

Good when working under a deadline

When goals are likely to be incompatible

**When are issues are too complex to be
addressed in a timely manner, etc....**

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Conflicts Positions

Collaborating

High assertiveness and cooperation

Ideal position

Takes patience and commitment to achieve

Satisfies concerns of all parties

Be firm on concerns while being flexible on positions

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Underlying Concerns

Some tips to explore underlying concerns:

Active listening

Asking questions “What do you really want?”

Express your concerns

Stick to the issues

Stick to the present

Take responsibility for role in the conflict

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Strategies for Dealing with Conflict

Expect the best.

Listen before talking, think before acting.

Get to the point.

Change what they do, not who they are.

Model the behavior you desire.

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Strategies for Dealing with Conflict

Adapt your approach to the person.

Protect dignity and self-respect.

Appeal to self-interests.

Rejoice at success.

Cut your losses with remorse not guilt.

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Communicating Non-Defensively

Disengage - Set aside differences temporarily to focus on results.

Empathize - Put yourself in the other person's shoes.

Inquire - Ask questions that reveal underlying concerns.

Disclose - Express feelings, needs and goals using "I statements."

Depersonalize - Look at work as what we do, not who we are.
